

Minutes of a meeting of Legal Services Board (LSB) on 24 March 2010

- Date:** 24 March 2010
Time: 9.30 am – 12.20 pm
- Venue:** Victoria House, Southampton Row, London WC1B 4AD
- Present:**
(Members) David Edmonds Chairman
 Chris Kenny Chief Executive
 Terry Connor
 Steve Green
 Rosemary Martin
 Bill Moyes (Item 5 onwards)
 Barbara Saunders
 Nicole Smith
 Andrew Whittaker
 David Wolfe
- Guest:** Dianne Hayter Consumer Panel Chair (Items 1-10)
- In attendance:** Chris Baas Project Manager (Items 1-6)
 Steve Brooker Consumer Panel Manager
 Lesley Davies Project Manager (Items 7-8 and 10)
 Sonya Gedson Regulatory Associate (Items 7-8)
 Fran Gillon Director of Regulatory Practice
 Michelle Jacobs Business Planning Associate (Items 11-13)
 Sandra Jenner HR Advisor (Item 17)
 Edwin Josephs Director of Finance and Services (Items 1-5 and 11 onwards)
 Bruce Macmillan General Counsel (Item 6 onwards)
 Karen Marchant Corporate Affairs Associate
 Julie Myers Corporate Director
 Crispin Passmore Strategy Director
 Dawn Reid Project Manager
 Bryan Hislop Board Secretary (Minutes)

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting.
2. There were no apologies for absence from Board Members.

Item 2 – Declaration of interests etc.

3. There were no declarations of interests.
4. Board Members were reminded to notify the Board Secretary about hospitality extended / received in the course of their LSB work.

Item 3 – Minutes: 22 February 2010

5. **The Board resolved to agree the minutes of the meeting held on 22 February 2010 and to submit them for signing as an authorised record to the Chairman.**

Item 4 – Report of action points

6. **The Board resolved to note the Report of action points.**

Item 5 – Paper (10) 17: Chief Executive’s progress report: March 2010

7. Chris Kenny (Chief Executive) presented his progress report.
8. The Board noted in particular:
 - that the Executive had considered recently initial proposals for both an all-colleague learning and development programme and an ‘away day’;
 - the appointment of an outsourced HR function;
 - that the Research Strategy Group met for the first time on 15 March;
 - that the regulatory reviews project was being re-planned in the light of the disappointing proposals received from the short-listed consultants;
 - the process challenges associated with and the lessons learned from the consideration of Bar Standards Board’s (BSB) applications for rule changes to enable barristers to participate in legal disciplinary partnerships and greater direct public access to barristers;
 - the recent positive developments in respect of the Legal Ombudsman (LeO), including the judgment in the TUPE-related declaratory hearing, Ministry of Justice’s (MoJ) decision about the procurement of IT services, and the signing of a lease for office accommodation in Birmingham;
 - the work with LeO and MoJ to develop an appropriate regulatory approach to avoiding consumer detriment during the close-down of Legal Complaints Service and the start-up of LeO; and
 - the appointment of Helen Edwards as the new MoJ Director General responsible for Access to Justice. It was agreed to invite Ms Edwards to a meeting of the Board.
9. The Board noted also updates about:
 - the discussions with MoJ officials about the draft LSB framework agreement;
 - the work with The Law Society and Solicitors’ Disciplinary Tribunal (SDT) to develop a memorandum of understanding in respect of SDT’s annual budget approval process;
 - the Gateways to the Professions Executive Group and its regulatory sub-group (chaired by the Chief Executive);
 - the Chairman’s and the Chief Executive’s meetings with John Penrose MP (Minister for Business, Enterprise and Regulatory Reform), Shadow Ministers

- and John Griffiths AM (Counsel General for Wales); and
- the LSB Open Forum in Bristol on 9 March. Additional stakeholder engagement events were planned, including in Cardiff on 12 May.

10. The Board agreed to delegate authority to decide BSB's Public Access Rules application to the Chief Executive. Applications in respect of Solicitors Regulation Authority's Disciplinary Procedure Rules and Institute of Legal Executives (ILEX) Professional Standards' new outcomes-based Code would be presented for decision to the Board on 27 April.

Action

(10) 12 – To invite Helen Edwards (MoJ Director General responsible for Access to Justice) to a meeting of the Board.

The Board resolved:

- a) to note the Chief Executive's progress report; and**
- b) to agree to delegate authority to decide BSB's Public Access Rules application to the Chief Executive.**

Item 6 – Paper (10) 18: Alternative business structures – Guidance on licensing rules

11. Fran Gillon (Director of Regulatory Practice) introduced a paper about LSB's guidance to licensing authorities (LA) on the content of licensing rules ('the Guidance').
12. The Board noted the Executive's consideration of the responses to the consultation (which were available in full at the meeting), a summary of the principal risks associated with alternative business structures (ABS), the draft Guidance, and a Final Impact Assessment of the Guidance. The Board noted also that it was a principle of the Guidance not to impose greater burdens on ABS than on non-ABS, and vice versa.
13. The Board noted that colleagues were reviewing MoJ's draft commencement order for Schedules 10 and 11 of Legal Services Act 2007 ('the Act') (relating respectively to the designation of Approved Regulators (AR) as LAs and licensing rules), which would be laid before Parliament before its dissolution.
14. In the course of the discussion that followed, the Board proposed:
- linking the outcomes of ABS regulation (para 5-29) explicitly to the Guidance;
 - reviewing the diversity-related outcome of ABS regulation (para 26); and
 - requiring the licence applicant to disclose publically the ultimate beneficial owner(s) of an ABS, except in very limited circumstances (para 107).
15. The Board considered at length the Executive's proposal not to require the Head of Finance and Administration (HoFA) to be a qualified accountant. Although it was

noted that the Act required only the Head of Legal Practice to be qualified (as an 'authorised person in relation to one or more of the licensed activities'), and that the HoFA role was not equivalent to that of a financial accountant, the Board considered that the statutory basis of the role justified a departure from the principle not to impose greater burdens on ABS than on non-ABS. It was agreed, therefore, to amend the Guidance to make clear that LAs could legitimately require HoFAs of complex or large ABS to be qualified accountants, provided that a degree of flexibility for smaller firms presenting lower levels of risk was retained.

16. The Consumer Panel ('the Panel') had proposed in its consultation response requiring each ABS entity, its owners and managers to have a clear regulatory duty to promote and to protect the interests of consumers. The Board endorsed the Executive's position, however, that the Act, the Guidance, LeO and the commercial incentives of providing good customer service provided individually and collectively proportionate consumer protection.
17. The Panel had also proposed as an explicit outcome of ABS regulation the reduction of risk to consumers (cf. enabling consumers to make more informed choices about the risk that they were prepared to take when obtaining legal advice). The Executive confirmed that there was no intention to transfer more risk to consumers operating in an ABS environment, and it was agreed to amend the Guidance to reflect the importance of informing the consumers of both ABS and non-ABS clearly and explicitly about risk and redress.
18. The Board agreed in principle that an LA should be able to impose an unlimited financial penalty on an individual or entity for non-compliance with licensing rules. Work would continue with MoJ to produce related rules for agreement by the Board.
19. Subject to the Executive's consideration of the above, the Board agreed to delegate authority to approve the publication of the Guidance and the related documents to the Chairman and the Chief Executive. The Board also noted the next steps in respect of the ABS workstream, including the consideration of applications from ARs for designation as an LA and their proposed licensing rules.

The Board resolved:

- a) **to agree in principle that an LA should be able to impose an unlimited financial penalty on an individual or entity for non-compliance with licensing rules; and to note that work will continue with MoJ to produce related rules for agreement by the Board;**
- b) **to agree to delegate authority to approve the publication of the guidance to LAs on the content of licensing rules and the related documents to the Chairman and the Chief Executive; and**
- c) **to note the next steps in respect of the ABS workstream.**

Item 7 – Paper (10) 19: LSB response to the Jackson Review of Civil Litigation Costs

20. Crispin Passmore (Strategy Director) introduced a paper setting out an initial analysis of LSB-relevant recommendations from the Jackson Review of Civil Litigation Costs ('the Review') and the extent to which there was a role or need for action by LSB.
21. The Board noted the limited quantitative evidence base under-pinning many of the recommendations, which contrasted with LSB's and the Panel's work in respect of referral arrangements. The Board endorsed, therefore, a pro-active approach to responding to the recommendations, particularly as they applied to or impacted on the regulatory objectives.
22. A more detailed analysis of the Review would be presented to the Board on 29 June, alongside a paper about LSB's policy proposals in respect of referral arrangements.

The Board resolved to note the initial analysis of the Jackson Review of Civil Litigation Costs.

Item 8 – Paper (10) 20: IPREG practising certificate arrangement for 2010

23. The Strategy Director introduced a paper recommending the approval of Intellectual Property Regulation Board's (IPREG) transitional practising fee arrangement for 2010.
24. The application had been the subject of extensive correspondence between LSB and IPREG and consultation with stakeholders (including The Chartered Institute of Patent Attorneys and The Institute of Trade Mark Attorneys). Although there was a potential for the arrangement to act as a disincentive to new entrants to multi-disciplinary practices, this would be monitored by the Executive and it was noted that the approval of the application for 2010 would not fetter the Board's discretion in respect of the consideration of future applications from ARs in accordance with the Practising Fee Rules.
25. The Board agreed the IPREG transitional practising fee arrangement for 2010 set out in the Paper.

The Board resolved to agree the IPREG transitional practising fee arrangement for 2010 set out in the Paper.

Item 9 – Paper (10) 21: Consumer Panel work programme 2010/11

26. The Consumer Panel Chair introduced a paper recommending the approval of the Panel's work programme 2010/11 ('the Programme'), which the Board was required by the LSB-Panel Memorandum of Understanding to endorse.
27. The Board noted that the Programme was ambitious, but that it allowed for time to respond to unanticipated events (e.g. emerging consumer detriment). Although the

Programme had not been subject to a formal consultation process, the Panel's stakeholders had been invited to contribute to its development.

28. In the course of the discussion that followed, the Board suggested that the Panel might wish to consider:
- re-visiting the presentation of the Panel's strategic objectives;
 - noting expressly that 'bulk purchasers of legal services' included consumers of publically funded legal services (para. 2.13); and
 - developing the presentation of the delivery plan.
29. Subject to the Panel's consideration of the above, the Board endorsed the Programme.
30. The Board also noted an update about the work of the Panel, in particular its research into the impact of referral arrangements on consumers. Separately, a meeting between the Panel and the ARs was planned to discuss consumer engagement.

The Board resolved to endorse the Consumer Panel work programme 2010/11.

Item 10 – Paper (10) 22: Access to justice strategy

31. The Strategy Director introduced the draft Access to justice strategy, which built on the Board's discussion about access to justice on 28 January.
32. In the course of the discussion that followed, the Board agreed that further 'supply and demand' market research data was required to develop LSB's strategic approach to the regulatory objective to improve access to justice. In particular, the concept of 'access to justice' (in contrast to access to legal services) had to be agreed.
33. The Board noted the strategic approach to access to justice identified in the Paper, which would be published and developed – on the basis of emerging and commissioned 'supply and demand' market research data (including about the types and needs of consumers and legal services and the impact of changes in market conditions on consumers, legal services and the regulatory objectives) – into a formal strategy.

The Board resolved to note the strategic approach to access to justice identified in the Paper.

Item 11 – Paper (10) 24: Equality scheme 2010/11

34. The Strategy Director introduced a paper about the Equality scheme 2010/11 ('the Scheme'), which was presented in draft to the Board on 30 November.
35. The Board noted both the summary and the Executive's consideration of the responses (received in writing and via three workshops) to the consultation on the

Scheme, which would be re-visited (alongside the Scheme) following the implementation of the Equality Bill.

36. The Board agreed to delegate authority to approve the publication of the Scheme to the Chairman and the Chief Executive.

The Board resolved:

- a) to note both the summary and the Executive's consideration of the responses to the consultation on the draft Equality scheme 2010/11; and**
- b) to agree to delegate authority to approve the publication of the Equality scheme 2010/11 to the Chairman and the Chief Executive.**

Item 12 – Paper (10) 23 a/b: Business Plan and budget 2010/11

37. The Corporate Director introduced a paper about the Business Plan and budget 2010/11 ('the Plan'), which was presented in draft to the Board on 30 November.
38. The Board noted both the summary and the Executive's consideration of the responses (received in writing and via two workshops) to the consultation on the Plan, which were available in full at the meeting.
39. In the course of the discussion that followed, the Board noted that:
- no substantive revisions to the draft Plan had been proposed;
 - the interpretation of the regulatory objectives annexed to the draft Plan would be published as a standalone document, alongside the Plan;
 - MoJ had indicated agreement to a baseline budget of £4,931k, which was £15k more than stated in the draft Plan (reflecting the anticipated increase in depreciation charges for 2010/11), although formal confirmation was awaited;
 - the proposed framework for evaluating LSB's own performance as an oversight regulator would be developed during 2010/11 in consultation with stakeholders; and
 - the Paper would form the basis of a post-consultation decision document.
40. The Board agreed in principle both the proposed changes to the draft Plan and, subject to receiving formal approval from MoJ, the budget. The Board agreed also to delegate authority to approve the publication of the Plan to the Chairman and the Chief Executive.

The Board resolved:

- a) to note both the summary and the Executive's consideration of the responses to the consultation on the draft Business Plan and budget 2010/11;**
- b) to agree in principle the proposed changes to the draft Business Plan and budget 2010/11;**

- c) to agree in principle the proposed budget of £4,391k, subject to receiving formal approval from MoJ; and**
- d) to agree to delegate authority to approve the publication of the Business Plan and budget 2010/11 to the Chairman and the Chief Executive.**

Item 13 – Paper (10) 25: Draft Welsh Language Scheme

- 41. The Corporate Director introduced a paper about the development of a draft Welsh Language Scheme ('the WLS') for publication for consultation.
- 42. In the course of the discussion that followed, the Board noted that:
 - the Welsh Language Act 1993 ('the 1993 Act') required public bodies to treat the English and Welsh languages on a basis of equality, so far as is both appropriate in the circumstances and reasonably practicable;
 - the 1993 Act required public bodies also to prepare Welsh language schemes setting out the measures that they proposed to take in connection with the provision of their services in Welsh;
 - the WLS had been developed in consultation with Welsh Language Board (WLB) and, after a 12-week public consultation, would be submitted for approval to WLB; and
 - in response to a request from WLB, criteria for translating LSB publications into Welsh had been developed, and were tabled at the meeting.
- 43. The Board agreed the proposed approach to meeting LSB's obligations under the 1993 Act and approved the WLS for publication for consultation.
- 44. The Chairman noted Barbara Saunders' and Elizabeth Davies' (Consumer Panel Member) contributions to the development of the Paper.

The Board resolved to agree:

- a) the proposed approach to meeting LSB's obligations under the Welsh Language Act 1993; and**
- b) to approve the draft Welsh Language Scheme for publication for consultation.**

Item 14 – Paper (10) 26: Finance report: February 2010

- 45. The Director of Finance and Services introduced the Finance report.
- 46. The Board noted that:
 - a small under-spend against budget was forecasted for 2009/10, which the Executive was considering using in part to purchase research data;
 - HM Treasury had no substantive comments about the draft consultation document on the proposed methodology for calculating the Levy for

recovering from the ARs the operational costs of LSB and LeO, which had been considered by the Board at the previous meeting; and

- the sum of £1m had been deposited in error in LSB's bank account by MoJ, which had since confirmed that LSB should retain the funds as an advance payment against its grant-in-aid needs for Q1 of 2010/11. The Chief Executive, in his capacity as Accounting Officer, had formally notified the National Audit Office about the incident.

The Board resolved to note the Finance report.

Item 15 – Paper (10) 27: Audit and Risk Committee – 3 March 2010

47. Bill Moyes (Committee Chairman) introduced a paper summarising the draft minutes of the meeting held on 3 March.

The Committee resolved to note the draft minutes of the Audit and Risk Committee meeting held on 3 March 2010.

Item 16 – Date of next meeting

48. The Board would next meet on 27 April 2010, 9.30am-1.30pm. The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

Item 17 – Any other business

Rosemary Martin

49. The Board recalled that Rosemary Martin would stand down as a Board Member on 31 March, following her appointment as General Counsel and Company Secretary of Vodafone Plc. The Chairman acknowledged Ms Martin's role in the set up of LSB and her singular and collective contributions to the work of the Board. Her valuable experience and knowledge would be greatly missed.

50. The Board noted that MoJ would lead the process to appoint Ms Martin's successor.

Sandra Jenner

51. The Chairman advised that Sandra Jenner (HR Advisor) would stand down from her current role on 30 March, but that she would continue to advise on a contractual basis the Board, the Remuneration and Nomination Committee and the Chief Executive. The Chairman acknowledged Ms Jenner's pivotal contribution to the successful set up of LSB.

BH 30.03.10

Signed as an accurate record of the meeting

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Date

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